

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H5

[REDACTED]

Date: NOV 15 2012 Office: LOS ANGELES, CA FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of a U.S. citizen father and lawful permanent resident mother and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her parents and her children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering both of her parents' medical problems and advanced age and country conditions in the Philippines.

The record contains, *inter alia*: an affidavit from the applicant; copies of the birth certificates of the applicant's four U.S. citizen children; affidavits from the applicant's parents; letters from the applicant's parents' physicians and copies of medical records and prescriptions; a copy of the applicant's husband's medical records; psychiatric evaluations; documentation from the applicant's employer; copies of tax returns, bank account statements, and other financial documents; a letter from the applicant's church; and a copy of the U.S. Department of State's Country Specific Information for the Philippines. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel concedes, that the applicant entered the United States in February 1996 using another individual's passport and visa. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning." but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-I-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23

I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the applicant's parents, [REDACTED] state that the applicant takes care of them, including taking them to the hospital when they are not well, taking them shopping, washing their laundry, cooking their meals, and buying their groceries. [REDACTED] contends he is seventy years old, has lived in the United States since August 1980, and has diabetes and hypertension. [REDACTED] contends she is almost seventy years old, has lived in the United States since March 1988, and has diabetes, congestive heart failure, vertigo, cerebral vascular accident, hyperlipidemia, and hypertension. She states she still works full-time, has been employed by the same employer for the past fifteen years, and has health insurance through her employer. According to [REDACTED] they have another daughter and son as well as ten U.S. citizen grandchildren living in the United States, but they state they are very depressed and emotionally distressed over the applicant's immigration problem. They contend that their established family unit, including the applicant's four U.S. citizen children, would be seriously disrupted if the applicant is forever separated from their family. Furthermore, [REDACTED] contend they cannot relocate to the Philippines with their daughter because of their medical needs and because they will lose their health insurance. According to [REDACTED] they have no place to live in the Philippines and conditions in the Philippines are unstable, particularly due to terrorist activities.

After a careful review of the record, the AAO finds that if [REDACTED] returned to the Philippines to avoid the hardship of separation, they would experience extreme hardship. Documentation in the record corroborates the applicant's parents' claims regarding their numerous medical conditions, including documentation showing that [REDACTED] was recently diagnosed with "high volume high grade Prostate Cancer" and referred for radiation. Copies of [REDACTED] medical records indicate he takes ten different medications. A letter from [REDACTED] physician states she has several serious medical conditions including diabetic peripheral neuropathy, hypertension, atrial fibrillation, a history of stroke, and hyperlipidemia, and a copy of her medical records indicate she underwent cataract surgery in 2011. The AAO recognizes that relocating to the Philippines would disrupt the continuity of their health care. In addition, a letter from [REDACTED] employer corroborates her claim that she continues to work full-time and has worked for the same healthcare center since February 1993. The AAO acknowledges that returning to the Philippines would entail leaving her employment and all of the benefits of her job, including health insurance. Moreover, the AAO acknowledges that both of the applicant's parents have lived in the United States for decades and

that readjusting to living in the Philippines would be difficult, particularly considering their advanced age and medical problems. Furthermore, with respect to the applicant's parents' fears about returning to the Philippines, the AAO acknowledges that the U.S. Department of State has issued a Travel Warning describing the risks of travel for U.S. citizens to the Philippines considering the continuing threat of terrorist actions and violence against U.S. citizens. *U.S. Department of State, Travel Warning, Philippines*, dated June 14, 2012. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if they returned to the Philippines to be with their daughter is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, [REDACTED] have the option of staying in the United States and the record does not show that either of them would suffer extreme hardship if they were to remain in the United States without their daughter. Although the AAO is sympathetic to the family's circumstances, if the applicant's parents decide to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding [REDACTED] contention that they rely on their daughter to care for them, at the same time, they state they have two other grown children and that their family is very close. Aside from contending that their other children "have their own family responsibilities to attend," they do not address whether their other children can help care for them as the applicant, who has a husband purportedly with health problems and four children of her own, does. There are no letters in the record from [REDACTED] other children in the record. Even assuming their other children are unable to help care for them, the record does not indicate that either [REDACTED] are unable to care for themselves despite their age and medical conditions. [REDACTED] continues to work full-time and none of the letters from their physicians or psychologists indicate that [REDACTED] require assistance with daily living. Although the record contains psychiatric reports from October 2005 and more recently from June 2008 diagnosing [REDACTED] with depressive disorder and [REDACTED] with adjustment disorder with mixed anxiety and depressed mood, the record does not show how their situation, or the symptoms they are experiencing, are unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). In sum, the record does not show that either [REDACTED] hardship is extreme, unique, or atypical compared to others in similar circumstances. Even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that [REDACTED] would suffer extreme hardship if they decided to remain in the United States without their daughter.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of*

Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to either of the applicant's parents, the qualifying relatives in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to either of the applicant's parents caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.